

1 two people, Susan Howard and Michelle McDowell, were not
2 included in those listing of people on paragraph 23, but isn't
3 there a further explanation there as to why those names are
4 missing?

5 WITNESS: Yes, there is.

6 JUDGE SIPPEL: Will you, will you indicate that,
7 please, or indicate that part of the paragraph?

8 WITNESS: Sure. In paragraph 23 at the very
9 beginning it says, "During the renewal period WMAR-TV's
10 management and staff regularly conducted individual
11 ascertainment interviews with a broad spectrum of leaders of
12 the community and, and with members of the general public."
13 It then goes on to specify the station personnel who had a
14 specific job responsibility to conduct such interviews. That
15 list is not an all encompassing list. Those are the people
16 who had a specific job responsibility.

17 JUDGE SIPPEL: All right.

18 MS. SCHMELTZER: Now, if you would turn to SH3-0241.

19 MR. HOWARD: Your Honor, could we ask that the
20 paragraph goes into the record?

21 MS. SCHMELTZER: Well, the whole, the whole
22 paragraph is in the record.

23 MR. HOWARD: The whole record -- paragraph on the
24 record is responsive to your inquiry since the witness is just
25 trying to speed things along and I think if the rest of the

1 paragraph goes in it's even more --

2 MR. ZAUNER: The paragraph is in the record, Your
3 Honor.

4 JUDGE SIPPEL: Well, the paragraph has already been
5 introduced in the record, but I didn't want to -- I know that
6 the witness was being put, I thought, in a terrible position
7 with respect to those limitations. I think that it's clear
8 enough now that these -- and the record, I have -- I mean, I
9 have a general recollection from earlier testimony in this
10 area. So I, I will permit -- let's move, let's move on to the
11 next question.

12 MS. SCHMELTZER: Okay.

13 BY MS. SCHMELTZER:

14 Q SH3-0241, do you have that in front of you, Ms.
15 Barr?

16 A Yes, I do.

17 Q That's an interview or a contact that -- let me
18 clarify this. Does this exhibit consist of interviews or does
19 this exhibit consist of contacts and is there a difference in
20 your mind?

21 A These were, these were a variety of meetings that
22 took place.

23 Q And the variety of meetings included contacts?

24 A Well, some of the, some of the meetings were, were
25 meeting that took place at the station. Some were -- some

1 took place in the context of events such as the reception that
2 the MCCJ had. Some took place off site and some took place
3 within the context of, of other meetings, perhaps a Fuel Fund
4 Board meeting, that sort of thing.

5 Q So they were not all interviews? Is that what
6 you're saying?

7 MR. HOWARD: Your Honor, can she clarify what she
8 means by interviews in the question?

9 JUDGE SIPPEL: Well, let's see if the witness -- do
10 you understand the question?

11 WITNESS: Well, I am somewhat confused by the term
12 interview because in some senses I think of the term interview
13 as being a formal sit-down one on one discussion, but in
14 another context I think of interview as being a broader term
15 that could refer to a lot of different types of meeting, so
16 I'm not sure when you say interviews to which you are
17 referring.

18 JUDGE SIPPEL: All right. Do you want to --

19 MS. SCHMELTZER: Well, I thought you previously
20 testified, correct me if I'm wrong, that in your mind an
21 ascertainment interview was something that was scheduled --

22 JUDGE SIPPEL: Well --

23 MR. HOWARD: Objection, Your Honor.

24 JUDGE SIPPEL: Sustained. Sustained. Ask the
25 question of the witness today exactly what's in your mind.

1 MS. SCHMELTZER: In your mind what is an
2 ascertainment interview?

3 JUDGE SIPPEL: Well, we've been through that. We're
4 not going to go back over that again. Your question is with
5 respect to an interview on this particular document on this
6 particular day. Tell the witness what you mean by interview
7 or did you -- you start by asking did she talk to anybody and
8 then you can build it from there. But we're not going to go
9 back over and redo what we did yesterday.

10 MS. SCHMELTZER: No, I'm not attempting to do that,
11 Your Honor. This exhibit says Station Contact Person and then
12 it lists an organization and a contact person and I just want
13 Ms. Barr to clarify what this exhibit reflects, which I think
14 she just did a moment ago.

15 JUDGE SIPPEL: Well, then if she did, then let's
16 move on to the next subject.

17 BY MS. SCHMELTZER:

18 Q I have before you SH3-0241 which is -- an the issue
19 identified is Consumer Education Booklets from Pueblo,
20 Colorado, and my question is what kind of an issue is that?

21 A It was -- again implicit in the description of what
22 was discussed was the issue of consumer education.

23 Q Was consumer education an ascertained community need
24 in 1991?

25 A Consumer education is an ongoing issue of relevance

1 to the community.

2 JUDGE SIPPEL: Well, that wasn't the question. Ask
3 the question again.

4 BY MS. SCHMELTZER:

5 Q The question was was consumer education an
6 ascertained need in the second or third quarter of 1991?

7 A It wasn't --

8 MR. HOWARD: That does answer the question, Your
9 Honor.

10 JUDGE SIPPEL: Well, she didn't answer the question.
11 That's all.

12 WITNESS: If you're asking me if consumer education
13 was an ascertained need in the community during 1991, yes, it
14 was.

15 BY MS. SCHMELTZER:

16 Q Was it reflected on your issues programs list?

17 A No, it was not.

18 Q I'd like you to move to SH3-0251, Ms. Barr. And the
19 issue identified there -- that looks like a meeting on June
20 25, 1991. The issue identified is How to Better Promote
21 Schools' Football Program. My question is was that an
22 ascertained community issue in 1991?

23 A Implicit again in this is that this is a minority
24 college and its football program is a significant part of that
25 university's program in the Baltimore area, so minority

1 concerns was an ascertained issue in 1991.

2 Q Does this exhibit say anything about minority
3 concerns?

4 A It says it is a minority college over in the left
5 column.

6 Q Am I correct that your responsive programming was
7 general sports coverage in the fall of 1991?

8 MR. HOWARD: Objection, Your Honor. The statement
9 is does the record state what the record states?

10 MS. SCHMELTZER: Well, it's a -- it's preliminary in
11 my next question.

12 JUDGE SIPPEL: Well, I'm going to sustain the
13 objection because what you're doing is you're reading the
14 specific language from the document without identifying it as
15 part of the document and the answer then could become
16 misconstrued. The question is -- you want to set the stage
17 for a responsive programming state. You state it and then ask
18 the question.

19 BY MS. SCHMELTZER:

20 Q Was the responsive programming -- was any of the
21 responsive programming done after September 3, 1991?

22 A Yes, it was.

23 Q This was connected with the football season which
24 would have been in the fall of 1991?

25 A That's correct.

1 Q I'd like you to turn to SH3-0254.

2 MR. HOWARD: Your Honor, I object on the grounds
3 that Ms. Schmeltzer said she had a few more examples and we've
4 gone through a few more examples.

5 JUDGE SIPPEL: What do you have in mind? The same
6 line of questioning with respect to --

7 MS. SCHMELTZER: As such.

8 JUDGE SIPPEL: How many are we talking about?

9 MS. SCHMELTZER: Well, not too many. I'll -- let me
10 start and see how many we have left here.

11 MR. HOWARD: We had -- Your Honor, we had a full
12 discussion of the issue of whether or not this was moving the
13 case forward and I believe some determination was made that it
14 was not except that it had some evidence -- some examples
15 would tend to show a few points about this exhibit and I think
16 that unless we're moving to different points -- I haven't seen
17 a new point made in Ms. Schmeltzer's questions in several
18 examples.

19 JUDGE SIPPEL: Well, if you're going to point out
20 these apparent inconsistencies and I can see exactly, you know
21 where you're going. You're going to identify the issues and
22 then you're going back to Exhibit F and determine that that
23 doesn't appear there. This is -- you're going to do that in
24 proposed findings anyway. You're going to go through this
25 thing. I know what you're going to do. You're going to just

1 line all that up for us and you've got testimony with respect
2 to an exemplary number of these situations. Again, I don't
3 see where we're going to sit here for another half-hour and do
4 this. It doesn't make any sense to me.

5 MS. SCHMELTZER: Well, I'm not, I'm not intending to
6 do it for much longer. I just want to get some representative
7 samples here.

8 JUDGE SIPPEL: How many more do you need?

9 MS. SCHMELTZER: Let me just see here.

10 MS. SCHMELTZER: Let me turn you to SH3-02 --

11 MR. HOWARD: She didn't answer your question, Your
12 Honor.

13 JUDGE SIPPEL: How many more?

14 MS. SCHMELTZER: Oh, how many more?

15 JUDGE SIPPEL: How many more are you talking about?

16 MS. SCHMELTZER: Maybe about ten or so.

17 JUDGE SIPPEL: No. I'll give you two more. Pick
18 your two best.

19 MS. SCHMELTZER: Well, I have two that I can go
20 with, Your Honor.

21 JUDGE SIPPEL: Thank you.

22 MS. SCHMELTZER: Okay.

23 BY MS. SCHMELTZER:

24 Q On page SH3-0277, Ms. Barr.

25 A Yes.

1 Q This is a meeting held at the station with the
2 Muscular Dystrophy Association and the issue identified is
3 Upcoming Telethon. Was upcoming telethon a -- an ascertained
4 community issue in 1991?

5 A No. Health and welfare were -- health and welfare.
6 I forget specifically how I reference it, but health care and
7 health and welfare was an issue.

8 Q And turning your attention to SH3-0302, that's --
9 the organization listed is the Stouffer Hotel. The issue
10 identified is United Way Campaign, asked to help raise
11 awareness of need for money from hotel staff. Was that an
12 ascertained community issue in 1991?

13 A The United Way covered a host of non-profit in the
14 community, so --

15 Q My question was was that an ascertained --

16 A No, that particular, that particular statement does
17 not accurately reflect what the issue identified should have
18 been.

19 Q And some of the PSAs that ran were during the period
20 December 1991?

21 MR. HOWARD: Your Honor, in the past -- I object.
22 In the past, Your Honor, we -- this questioning has been
23 permitted on the grounds that it elicited from the witness
24 testimony as to what the relevant issue was, and I'm not sure
25 that the, that the witness has explained what the relevant

1 issue was.

2 JUDGE SIPPEL: Well, her -- she answered the
3 question. She certainly answered the question. I will give
4 her an opportunity to clarify her answer before we leave this
5 page, but right now we're talking about responsive
6 programming. I'm going to, I'm going to -- if it's an
7 objection, I'm not going to -- I'm going to overrule the
8 objection, but I'm going to give the witness an opportunity to
9 explain her answer. Now, with respect to the responsive
10 programming, if you're going to ask the witness about it,
11 please read -- it's only one line. Read the entire line into
12 the record.

13 MS. SCHMELTZER: I think I just lost the page.
14 Where was it?

15 JUDGE SIPPEL: It's 0302.

16 MS. SCHMELTZER: Okay.

17 JUDGE SIPPEL: One of your two best.

18 BY MS. SCHMELTZER:

19 Q The responsive programming says, "PSAs ran July,
20 December 1991." Does that mean July -- that meant the PSAs
21 ran in July and in December?

22 A No. It should say July through -- it should be a
23 dash, not a comma.

24 Q So did some of these PSAs run after September 3,
25 1991?

1 A Yes.

2 Q Ms. Barr --

3 JUDGE SIPPEL: Wait. Before you pass off of this
4 page, I said I would -- on my own motion here I'm asking you
5 do you have any comment that you wanted to add with respect to
6 how the United Way campaign got in as an issue?

7 WITNESS: Yes.

8 JUDGE SIPPEL: Would you offer that, please?

9 WITNESS: Of course. The United Way is a fund
10 -- a host of organizations in the Baltimore area as it does in
11 many, many cities and, as such, is involved in a variety of
12 issues that had been ascertained to be important to the
13 community since they fund issues concerning education,
14 homelessness, health care, etc. And my personal involvement
15 with the United Way was such that I worked as a volunteer on
16 the United Way campaign assisting them and helping to go out
17 and make the case for the United Way in the central Maryland
18 area so that proper funds could be raised. In the process of
19 making the case for the United Way there would be discussions
20 between -- when I held a meeting there would be discussions
21 between myself and the person I contacted with respect to a
22 broad variety of community issues. When I indicated this on
23 this particular exhibit, again I was making a lot of
24 assumptions and, and assuming a lot of things were implied.
25 This particular person I met with was president of a major

1 hotel in Baltimore and, as such, was responsible for a United
2 Way campaign within his own organization. He and I discussed
3 why the United Way was important to the community and he
4 offered to me his opinions on a variety of subjects with
5 respect to the monies that are raised by United Way and then
6 used for many of these ascertained community needs. And I
7 know I didn't explain all that because it seemed to me that
8 the United Way was generally understood across the country by
9 the average person.

10 JUDGE SIPPEL: But you said that it's not, it's not
11 identified in Exhibit F as an, as an issue, as a community
12 issue?

13 WITNESS: The United Way covers so many issues that
14 it's not the United Way that's the issue so much as what the
15 United Way serves. It serves hunger, homelessness, education,
16 etc. I mean --

17 JUDGE SIPPEL: Oh, I have the general wind of what
18 you're saying, but I was just again trying to tie it in with
19 -- well, you've answered the question. You've answered both
20 questions that were put to you. Anything further on this?

21 MS. SCHMELTZER: No, but, Your Honor, I would move
22 to strike those parts of this exhibit that are dated after
23 September 3, 1991.

24 MR. HOWARD: Objection, Your Honor. This is -- to
25 the extent that it's responsive to contacts occurred during

1 the renewal period, it's directly relevant to Scripps Howard's
2 case and if there's -- you can show planning that occurred
3 during the renewal period and the result that occurred
4 afterwards, Commission precedence permits that to be
5 considered. Otherwise, it -- you would not have a picture of
6 what had occurred during the renewal period unless you also
7 are permitted to look -- not to claim credit, but just to
8 identify as to what occurred after the renewal period.

9 JUDGE SIPPEL: Well, it's -- this is not -- I would,
10 I would treat it as Ms. Howard has explained it provided that
11 it's continuing conduct. There's not going to be any -- there
12 shouldn't be situations where there was a hiatus between the
13 end of the renewal period and then reoccurring at a later
14 time. Do you understand what I'm saying?

15 MR. HOWARD: I'm not entirely sure, Your Honor. If
16 there were something -- for example, the planning of a, of a
17 town meeting that occurred during the renewal period and then
18 the town meeting occurred at a discrete time later, later on,
19 I think that, that planning for that town meeting should be,
20 should be considered, not the town meeting that resulted, but
21 the planning indicates that the licensee was responding to
22 community needs by planning programmings during the renewal
23 period. And so if that's not -- if you mean, on the other
24 hand, that it's -- that in years to follow there were
25 additional matters or newly raised events, rather than a

1 continuation of the project with day by day continual work on
2 it, yeah, that would not be a problem.

3 JUDGE SIPPEL: Ms. Schmeltzer?

4 MS. SCHMELTZER: Well, Your Honor, it's our
5 contention that some of these -- there is no showing that some
6 of these contacts had any prior history and in many cases the
7 description of the responsive programming are things like PSAs
8 produced and aired during February/March 1992. I'm looking
9 specifically at SH3-0311.

10 JUDGE SIPPEL: 0311?

11 MS. SCHMELTZER: Um-hum. The responsive programming
12 was aired during 1992 and there's some other instances of
13 that.

14 MR. HOWARD: That's exactly the kind of example that
15 I think is fully appropriate to be considered, Your Honor.

16 MS. SCHMELTZER: I will also refer you to SH3-0320
17 and 0321.

18 JUDGE SIPPEL: Well, the -- I see. The date of the
19 event only -- let me try 0311 while we're here. The date of
20 the event was September the 4th.

21 MR. HOWARD: Which page are you on, Your Honor?

22 JUDGE SIPPEL: 0311.

23 MR. ZAUNER: 0311?

24 MS. SCHMELTZER: The date of the contact.

25 JUDGE SIPPEL: Well, that's the event. That's the

1 event that they would be seeking credit for. As I -- now, I'm
2 following this along the lines that Mr. Howard is offering
3 this evidence, too, that these -- he's saying that they were
4 -- what were planned for on September the 4th took place or
5 the fruits of the effort took place in February and March of
6 1992. And I'm saying, well -- and you're objecting to that --
7 you're objecting because you don't think that the fruits of
8 the labor should be --

9 MS. SCHMELTZER: Should be 1992, right. The fruits
10 of the labor can only be recognized to the extent they
11 occurred before September 30th. I believe that was your
12 ruling.

13 JUDGE SIPPEL: That was my earlier ruling.

14 MR. HOWARD: There's a big distinction between being
15 in the record to support what occurred during the renewal
16 period and being relied upon in our findings -- in Scripps
17 Howard's findings of fact that it's something for which the
18 station should get credit. This just confirms that this was
19 an ascertainment contact that led to programming. If the --
20 if it's struck -- if the responsive programming is struck,
21 it's left with a question as to whether -- you know, it's not
22 as definitive an ascertainment contact.

23 JUDGE SIPPEL: Well, I will tell you that I am not
24 -- I mean, when these findings are presented to me, I am not
25 going to vary from the earlier ruling that I had made with

1 respect to September 30th. We had debated that issue and I
2 came down and I gave reasons why I came down with those dates
3 and --

4 MR. HOWARD: My understanding of that ruling was
5 that Scripps Howard was entitled to full credit for -- as
6 responsive programming to which it could claim renewal
7 expectancy credit that occurred prior to September 30, where
8 it could show that planning occurred prior to September 3.

9 JUDGE SIPPEL: Prior to September 3. That's
10 correct.

11 MR. HOWARD: This is not -- Scripps Howard -- I
12 assure you, Your Honor, there is no intention by Scripps
13 Howard to claim credit for the PSAs that were produced and
14 aired in February and March of 1992. That is not there to
15 claim renewal expectancy credit. It is there to support the
16 events that occurred during the renewal period as an
17 ascertainment contact and that is all that Scripps Howard
18 intends to utilize that for if it's left in there.

19 JUDGE SIPPEL: Well, my point was -- just a minute
20 I'll be right with you, Mr. Zauner. But my point was that I
21 wasn't going to give any credit to anything that was in here
22 that went past the, the 30th of September. I mean, I would --
23 my own, my own approach to this evidence is that I'm going to
24 exclude it, so I don't know why we have to go through striking
25 it. Mr. Zauner?

1 MR. ZAUNER: Your Honor, I was just going to, to say
2 that with the limited purpose that's been defined here by Mr.
3 Howard, we would have no objection to it, but we agree with
4 what you're saying essentially and that is that the
5 programming after September 30th should not be considered. As
6 I understand it, Mr. Howard is not really arguing with that.

7 JUDGE SIPPEL: He's not?

8 MR. ZAUNER: He's not arguing with that. He's not.

9 JUDGE SIPPEL: But Ms. Schmeltzer wants us to go
10 through here and strike this type of thing and I'm just not
11 going to do it, but I wanted to explain why I'm not going to
12 do it. All right. Do we have any more questions with respect
13 to Exhibit E?

14 MS. SCHMELTZER: No, Your Honor.

15 JUDGE SIPPEL: Can we move into another area then?

16 MS. SCHMELTZER: Yes.

17 BY MS. SCHMELTZER:

18 Q Did there come a point in time after the competing
19 application was filed, Ms. Barr, that you contacted NBC?

20 A With respect to what? I talk to NBC several time a
21 week.

22 Q That you contacted NBC with respect to the
23 programming that your station ran during the relevant period
24 of time?

25 A Yes. I contacted NBC to ask them to send me

1 computer files, paper copies of computer files.

2 Q Why did you contact NBC?

3 A At the request of counsel.

4 Q And did you compose a letter that you sent to NBC?

5 A I sent them -- I believe it was a memo.

6 MR. HOWARD: I object as to the exploration of the
7 preparation of the exhibit and, unlike the case before where
8 there was not -- the documents hadn't been fully revealed and
9 perhaps there wasn't an underlying document that was -- here
10 all the underlying documents are in counsel's hands.

11 JUDGE SIPPEL: I get the feeling that we're going to
12 get to this NBC documentation that was recently turned over.
13 Is that correct?

14 MS. SCHMELTZER: Yes, and Mr. Howard sent us a
15 letter waiving work product.

16 JUDGE SIPPEL: Well, he's waiving as to what he --

17 MR. HOWARD: With respect to the document.

18 JUDGE SIPPEL: -- turned over to you. I'm going to
19 -- this is -- again, we're just getting into methodology here.
20 She hasn't gone down to any specific give or take between
21 counsel yet and she won't do that, I'm sure. So, okay, this
22 -- we're at the point anyway where the progress of this was a
23 memo?

24 WITNESS: That's correct.

25 JUDGE SIPPEL: You prepared the memo?

1 WITNESS: Yes, I did.

2 JUDGE SIPPEL: Okay.

3 BY MS. SCHMELTZER:

4 Q And you sent the memo to NBC?

5 A Yes, I did.

6 Q Do you recall to whom you sent it at NBC?

7 A As I recall her name was Nancy Cook.

8 MR. ZAUNER: Objection, Your Honor. Could we -- the
9 document is available and would speak for itself and the best
10 evidence would be the document. To have this witness trying
11 to remember the name that she sent it to is just wasting time.

12 JUDGE SIPPEL: That's a good point. Do we have this
13 document that you --

14 MS. SCHMELTZER: Yes, we do, Your Honor.

15 JUDGE SIPPEL: Well, let's get --

16 MS. SCHMELTZER: I'll have it marked for
17 identification as Four Jacks Exhibit 19.

18 JUDGE SIPPEL: Two copies to the reporter, please.

19 MS. SCHMELTZER: Right.

20 JUDGE SIPPEL: And identified --

21 (The document that was referred to as
22 Four Jacks Exhibit No. 19 was marked
23 for identification.)

24 JUDGE SIPPEL: This document which has been marked
25 now as Four Jacks No. 19 for identification is -- it's on

1 WMAR-TV Baltimore letterhead dated August 10, 1992, addressed
2 to Nancy Cole and Vicky Anderson from Emily Barr, re: Archive
3 Request. All right. Do you have a question on that now?
4 MS. SCHMELTZER: Yes. This is a six page document.
5 JUDGE SIPPEL: Thank you.
6 BY MS. SCHMELTZER:
7 Q Ms. Barr, do you recall seeing this letter before?
8 A Yes, I do.
9 Q And is this the letter that you sent to Nancy Cole
10 and Vicky Anderson at NBC?
11 A Yes, it is.
12 Q Do you know what Nancy Cole's position is at NBC?
13 A She is in the Archives Department. I believe she is
14 the manager of Archives.
15 Q And was in August '92, I take it?
16 A Yes.
17 Q And do you know what Vicky Anderson's position was
18 at NBC?
19 A I believe they also have a west coast archival
20 department that handles their entertainment archives.
21 Q And Ms. Anderson was in the west coast office?
22 A That's correct.
23 Q Now, did you have any phone calls with Nancy Cole or
24 Vicky Anderson that preceded the sending of this letter?
25 A As I indicate in my memo, I spoke to them on the

1 Friday prior.

2 Q Did you speak to both of them in one call?

3 A As I recall, I spoke to them individually.

4 Q And what did you ask them for when you spoke to them
5 over the phone?

6 A I asked them for a copy of archival information with
7 respect to programming that had aired on NBC for the period of
8 May 30, 1991 through September 30, 1991.

9 Q And you were -- did you tell them that you were
10 looking --

11 A I'm sorry. June 1, 1991 through September 30, 1991.

12 Q And did you tell them that you were looking for
13 examples of both network and local programming?

14 A As I said in my memo --

15 MR. ZAUNER: Your Honor, the document speaks for
16 itself.

17 JUDGE SIPPEL: The document will speak for itself.

18 MS. SCHMELTZER: Okay.

19 JUDGE SIPPEL: I mean, if you want to get into
20 questions like what was the purpose of the, you know, the
21 purpose of sending the memo or what was she trying to get from
22 NBC, for what purpose, but we know what's in the memo.

23 BY MS. SCHMELTZER:

24 Q Did you -- is this your handwriting on the
25 attachment which is the handwritten list of issues?

1 A Yes, it is.

2 Q And where did you obtain that list of issues from?

3 A I took the front page of the second quarter and
4 third quarter issues and programs lists and I made a
5 handwritten copy of the issues that were listed, and I did not
6 duplicate -- if an issue was on both lists, then I wrote it
7 down once.

8 Q If you would just look at the -- and the typed list
9 of issues, I take it, was typed up from your handwritten list?

10 A That's correct.

11 Q And if you would just look down at number 4,
12 Metropolitan State Concerns, you have in parentheses,
13 "Maryland Only."

14 A That's correct.

15 Q Was there a reason why you added that?

16 A Because I wanted them to understand since one was in
17 New York and one in L.A. that I was not looking for issues in
18 Boise, Idaho.

19 Q And was that also true for Government Affairs
20 Legislation and Redistricting?

21 A Yes, it was.

22 Q Now, what was the purpose of sending this letter,
23 Ms. Barr?

24 MR. ZAUNER: Your Honor, we have begun now cross-
25 examining on Exhibit 19. It hasn't been offered into evidence

1 yet.

2 JUDGE SIPPEL: I -- yes. It's -- and we -- my
3 ruling has been not to rephrase what's in here because I'm
4 assuming it's going to be in.

5 MS. SCHMELTZER: I would move the receipt of Four
6 Jacks Exhibit 19 into --

7 JUDGE SIPPEL: Is there an objection?

8 MR. HOWARD: We object depending on the purpose that
9 it's being offered, Your Honor, as to relevancy.

10 JUDGE SIPPEL: Let's have a proffer of relevancy.

11 MS. SCHMELTZER: The proffer is that this station
12 had to go to NBC a year after the relevant period of time to
13 find out what was aired that was responsive to community
14 programs -- to local issues.

15 JUDGE SIPPEL: It goes to, it goes to the
16 ascertainment efforts. I will -- I mean, among other things.

17 MR. HOWARD: Well, Your Honor, the ascertainment was
18 defined and explained as being simply the -- a restatement of
19 the issues programs list which was a contemporaneous document.
20 This is basically a restatement of documents that are
21 contemporaneous in the license term that were included in the
22 record.

23 JUDGE SIPPEL: Well, I think it's relevant that she
24 has to go to NBC to get this put together. I mean, it does,
25 it does impact in terms of how she is being represented here

1 in terms of being the person who was in control of putting the
2 ascertainment issues together. She had to utilize a very
3 significant resource. I think we're entitled to have the
4 record explained just why and how. It's not going to take
5 very long. It's in. It's received in evidence as Four Jacks
6 No. 19.

7 (The document that was previously
8 marked for identification as Four
9 Jacks Exhibit No. 19 was received
10 into evidence.)

11 JUDGE SIPPEL: I'm sorry. Did the Bureau have a
12 position on this?

13 MR. ZAUNER: No, Your Honor. You've ruled.

14 BY MS. SCHMELTZER:

15 Q For what purpose did you send this letter to NBC in
16 August of 1992?

17 A I was asking them for a paper copy of all of the
18 programming, news and entertainment programming, that they had
19 run in 1991 that would have dealt with the issues that we had
20 ascertained locally as having been relevant to the Maryland --
21 to the central Maryland community that we served. This is not
22 information that I have through the general course of
23 business.

24 Q And did NBC --

25 JUDGE SIPPEL: I don't understand that answer. Why

1 | wouldn't you have that information?

2 | WITNESS: Well, what NBC would send us on a, on a
3 | daily basis is a, is a record of what programming is going to
4 | air, but after that programming airs we don't retain copies of
5 | it as a general rule of thumb. We would have mountains of
6 | paper. So once -- and this was a year later. So I had -- I
7 | was trying to reconstruct what NBC had done with respect to
8 | news and, and programming. We are an NBC affiliate. We carry
9 | NBC's programming so, therefore, in order for me to
10 | reconstruct what NBC had done I had to go back to the source
11 | which was NBC because as just general work practice I didn't
12 | keep a record of every NBC story that ran in the news or on
13 | the Today Show or, or wherever. There would just be no reason
14 | to keep that information locally.

15 | JUDGE SIPPEL: All right. You're telling us then
16 | that as a matter of practice, as a matter of business
17 | practice, at WMAR-TV going back that far into 1991 there would
18 | not be an in-house way of reconstructing what the programming
19 | was at any given day?

20 | WITNESS: On the -- on programming that was, that
21 | was delivered through NBC.

22 | JUDGE SIPPEL: Through NBC?

23 | WITNESS: That's correct.

24 | JUDGE SIPPEL: That's -- that was assumed in my
25 | question, but you're absolutely right. That's a very